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June 10, 2015  
Part of  
Public Record

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June 10, 2015

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

Re: **Docket No. AB-550 (Sub-No. 3X),  
R.J. Corman Railroad Company/Allentown Lines, Inc. --  
Abandonment Exemption -- In Lehigh County, Pa.**

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is the Reply of R.J. Corman Railroad Company/Allentown Lines, Inc. to James Riffin's "Initial Comments."

If you have any questions regarding this filing, please feel free to contact me.  
Thank you for your assistance on this matter.

Respectfully submitted,



Robert A. Wimbish  
Attorney for R.J. Corman Railroad Company/  
Allentown Lines, Inc.

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

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**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

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**ATTORNEYS FOR R.J. CORMAN  
RAILROAD COMPANY/ALLENTOWN  
LINES, INC.**

Dated: June 10, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
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TO JAMES RIFFIN'S "INITIAL COMMENTS"**

Well, look what the cat dragged in!

James Riffin ("Riffin") has filed "Initial Comments" in the above-referenced proceeding, claiming that R.J. Corman Railroad Company / Allentown Lines, Inc. ("RJC") "has [unfortunately] become caught up in another Conrail morass," and "suggesting" that RJC ask the Board to hold the subject abandonment proceeding in abeyance. RJC will not request an abeyance, and instead asks the Board to move forward with its consideration of RJC's abandonment request, with the expectation that the Board will issue a merits decision by or before August 19, 2015. As explained herein, there is no morass here except as a matter of Riffin's mistaken legal imaginings, and, even if there were any regulatory loose ends that might need to be rectified in advance of RJC's consummation of its proposed abandonment, those loose ends can easily be addressed by appropriate Board action.

**BACKGROUND**

RJC filed on May 1, 2015, an individual petition for exemption (the "Petition") for authority to abandon approximately 3.5 miles of rail line extending between milepost 93.18 in Allentown, Pa., and milepost 96.709 in or near Whitehall, Pa. (the "Line"). The Board's

Director of the Office of Proceedings published notice of the abandonment petition (the “Notice”) on May 21, 2015.<sup>1</sup> Among other things, the Notice states that replies to the Petition are due by or before June 10, 2015, and advises that the Board will render a decision on the merits of the Petition by August 19, 2015.

As is relevant to the Board’s merits analysis, RJC pointed out in its Petition that there is only one shipper located along and served by the Line (American Carbonation), and it has reached an agreement with RJC pursuant to which, on or about June 12, it will relocate its shipping operations to another part of the RJC system. As a consequence, no active shipper will lose service as a result of the consummation of RJC’s proposed abandonment. And, as RJC has explained, the proposed abandonment will facilitate the elimination of trackage that already was underutilized, and will permit RJC to sell the property for re-development, thereby enabling RJC to devote its resources to aggressively promoting its short line service on its other rail lines – all in the furtherance of the Rail Transportation Policy of 49 U.S.C. § 10101.

On May 21, 2015, the same day that the Board issued its Notice, Riffin filed what he styled as “Initial Comments”<sup>2</sup> responsive to RJC’s Petition, the express purpose of which was to suggest that RJC hold the subject abandonment proceeding in abeyance.

### **PROCEDURAL MATTER**

The Initial Comments cannot and should not be construed as a “reply,” inasmuch as it was likely prepared in advance of the Board’s formal acceptance of the Petition. Moreover, the Initial Comments do not go to the merits of RJC’s Petition, but rather to the more limited

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<sup>1</sup> There appears to be a modest discrepancy concerning the date that the subject Petition was filed. RJC understands that its Petition was received by the Board (and therefore deemed as filed) on May 1, 2015. However, the Board-issued notice released on May 21, states that the Petition was filed on April 30, which appears to be in error.

<sup>2</sup> RJC is not entirely sure why Riffin designated his filing as “initial,” other than possibility to signal that, in the absence of appropriate Board control of the docket here, he plans to tender other filings at his discretion at any time hereafter, in characteristic defiance of the Board’s rules of procedure.

question of whether RJC should ask the Board for a procedural time-out to allow RJC to chase after Riffin's ghosts, and, as such, RJC is entitled to file this reply. Thus, Riffin's Initial Comments might most reasonably be construed as a request to hold this proceeding in abeyance, and, if so, then RJC is certainly entitled to reply. But if the Board should nevertheless construe the Initial Comments as a reply, then RJC respectfully requests that it be granted leave to submit the present filing as a sur-reply in the interest of a fully-developed record.

### **PRELIMINARY ISSUE**

RJC acknowledges that the Petition contains an inconsequential error concerning the Line's history; an error that Riffin characterizes as a "misrepresentation." Specifically, RJC did not acquire the Line as originally explained via Consolidated Rail Corporation – Abandonment Exemption – in Erie County, NY, AB-167 (Sub-No. 1164X) (STB served Sept. 30, 1996). Rather, RJC acquired the Line as part of a larger transaction under R. J. Corman Railroad Company / Allentown Lines, Inc. – Acquisition and Operation Exemption – Lines of Consolidate Rail Corporation, Docket No. FD 32987 (STB served Jul. 18, 1996). The July 18, 1996 notice of exemption is available on the STB's website, and also is accessible via on other online legal resources, so RJC cannot explain how it may have been that Riffin could not have simply checked and pointed to the correct proceeding himself, which would have been a service to all. Ultimately, however, while the reference to the AB-167 (Sub-No. 1164X) proceeding was incorrect, it is immaterial, and was not intended to be, and would not reasonable be construed by interested parties as, misleading. This is nothing more than the sort of sand that Riffin would like to drop into the gears of the STB processes, simply for the purposes of being disruptive.

## ARGUMENT

The larger issue that Riffin attempts to insert into this process is his claim that the Delaware and Hudson Railway Company, Inc. (“D&H”) possesses unextinguished trackage rights over the Line. On the basis of what RJC believes is an invalid legal assumption – RJC believes that D&H’s trackage rights were legally terminated years before – Riffin is of the impression that the Line has been pulled into the vortex of his half-baked, quixotic effort to force the sale of certain trackage rights that D&H possesses (or, in some cases, as here, possessed) under his ultimately bankrupt legal theory. As is shown below, the Board need not delay action on RJC’s Petition and there is no “morass.” But even if the Board were to find that Riffin’s Initial Comments here have any merit whatsoever, then the Board possesses the authority and discretion to resolve quite easily the “morass” that Riffin claims to exist.

### **A. Under Then-Applicable “3-R Act” Abandonment Provisions Invoked by Conrail, D&H’s Trackage Rights Were Legally Terminated**

Riffin’s advances a foundational legal premise (i.e., that D&H needed to obtain, but failed to get, independent trackage rights discontinuance authority over a larger line segment of which the Line is a part) that is not fully-formed. As it turns out, Riffin’s legal premise is dangerous, because it appears to be wrong.

#### **1. The Docket No. AB-167 (Sub-No. 451N) proceeding and the RB3 Decision**

The Initial Comments establish that the Line was once part of a longer rail line segment once designated as United States Railroad Administration (“USRA”) Line Code 0503A (“Line 503A”) – a line of railroad extending from Allentown to Lehigh, Pennsylvania. Line 503A depicted in USRA’s Final System Plan was conveyed to Consolidated Rail Corporation (“Conrail”) via the trustee of the bankrupt Lehigh Valley Railroad. The Initial Comments also show that a 1979 agreement between Conrail and D&H (the “1979 Agreement,” attached as an

unlabeled attachment to the Initial Comments) provided for D&H to exercise overhead (non-local) trackage rights over Line 503A. Finally, the Initial Comments show that Conrail filed an application (the "Application") to abandon a roughly 21-mile portion of Line 503A from Lehighton south (the "Lehighton Segment") pursuant to Interstate Commerce Commission ("ICC" – the Board's regulatory predecessor) Docket No. AB-167 (Sub-No. 451N). And in that Application, Conrail openly acknowledged D&H's overhead trackage rights on Line 503A. Riffin fails, however, to explain what happened in the Sub-No. 451N proceeding beyond that, although RJC strongly suspects that Riffin knows far more about the Sub-No. 451N proceeding than he has shared with the Board and with RJC here, and if that is so, then, once again, Riffin has done the agency a disservice and has only further undermined his credibility and standing.

In the interest of completing the Sub-No. 451N "story" that Riffin carelessly has only started, D&H on or about March 3, 1982, filed an objection to Conrail's proposed abandonment of the Lehighton Segment. See Exhibit A (attached). In a decision served on March 11, 1982 (but decided on February 25, 1982 – before the ICC had received D&H's opposition filing on March 3) the ICC's Review Board Number 3 issued a certificate and decision (the "RB3 Decision") authorizing Conrail's abandonment of the Lehighton Segment. See Exhibit B (attached). The RB3 decision does not address D&H's opposition (probably due to the fact that Review Board Number 3 had reached its decision beforehand), but states that – (1) under the applicable statute, the ICC "must grant" Conrail's Application unless an interested party had timely filed an offer of financial assistance ("OFA"); and (2) since no party had come forward with a timely request to pursue an OFA, the "[A]pplication is granted."

RJC has ascertained that D&H did not pursue a request to reopen or to reconsider the RB3 Decision or any other such appeal, and that the ICC did not issue a supplemental

decision to the RB3 Decision squarely addressing D&H's opposition filing. The complete record in the Sub-No. 451N proceeding therefore leaves open various possible interpretations of the aftermath of the RB3 Decision, but the fact that Conrail's Application was explicit about the presence of D&H trackage rights over Line 503A strongly suggests that the ICC, whether or not it was aware of D&H's objection, was under a statutory mandate to order the Lehigh Segment abandonment, subject only to the OFA safeguard provisions. Thus, by virtue of the RB3 Decision and the applicable statute, it appears that D&H's trackage rights were deemed terminated by the ICC. And again, for whatever reason, D&H acquiesced in the ICC's order granting Conrail the abandonment it requested, leading ultimately, in the salvage of the Lehigh Segment and D&H's reliance on an alternative overhead trackage rights route between Allentown and Lehigh.

## **2. The 3-R Act abandonment provisions**

In revisiting the 1981-82 Sub-No. 451N proceeding, it appears that Riffin – like the D&H seemed to do back at the time – assumes that Title 49, chapter 109 (which was then and is now the applicable portion of Title 49 governing conventional railroad line abandonments) governed D&H's trackage rights discontinuance. But the RB3 Decision indicates that chapter 109 did not apply, except with respect to certain offer of financial assistance procedures. Rather, D&H's trackage rights discontinuance was effectuated under an entirely different statutory regime that did not entitle D&H to block Conrail abandonments by virtue of its trackage rights.

The documents appended to Riffin's Initial Comments confirm that Conrail, on November 30, 1981, invoked the unique-to-Conrail abandonment processes then available to it

under the 3-R Act<sup>3</sup> at 45 U.S.C. § 748 to abandon the Lehigh Segment. The abandonment provisions of Title 45, Section 748 are decidedly – and explicitly – separate and apart from the standard abandonment process available to all other rail carriers at chapter 109 of Title 49.<sup>4</sup> 49 U.S.C. § 748(a) provides in relevant part that any Conrail abandonment presented under the 3-R Act process “shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of Title 49.”

D&H acknowledged in its March 3, 1982 objection that 49 U.S.C. § 748(b) deprived the ICC of discretion to deny an abandonment when Conrail invoked the 3-R Act abandonment provisions prior to December 1, 1981. Section 748(b) states as follows:

Any application for abandonment that is filed by [Conrail] under this section before December 1, 1981, shall be granted by the [ICC] within 90 days after the date such application is filed, unless, within such 90-day period, an offer of financial assistance is made in accordance with [45 U.S.C. § 748(d)] with respect to the line to be abandoned.

The record reflects that in filing its Section 748 Application, Conrail offered D&H the Lehigh Segment for discounted net liquidation value (“NLV”) pursuant to the special appraisal and adjustment provisions at 49 U.S.C. §748(d), which extended to D&H adequate rail service safeguards.<sup>5</sup> If D&H had elected to acquire the Lehigh Segment pursuant to Sections 748(d) and (e) – and the RB3 Decision shows that it clearly did not – then D&H would have preserved

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<sup>3</sup> In this case, Section 308 of the Regional Rail Reorganization Act of 1973 (“3-R Act”), as enacted by Section 1156 of the Northeast Rail Service Act of 1981.

<sup>4</sup> A copy of Section 748 is attached hereto as Exhibit C.

<sup>5</sup> 45 U.S.C. §§ 748(d) and (e) entitled D&H, at its discretion, to protect its interests in a line like the Lehigh Segment by acquiring it at 75% of its ICC-appraised NLV. Indeed, in a Federal Register notice issued in the Sub-No. 451N proceeding on October 4, 1982 (Exhibit D), the ICC set the appraised Lehigh Segment NLV: \$1,647,927. Exhibit D was taken from the Federal Register database of Westlaw.com, and appears to reflect a recurring error, in that “Lehigh” is twice referred to, as “Leighton,” lacking the additional “h.” RJC has not been able to confirm this, but presumes that the spelling error is unique to Westlaw, and that the correct spelling of Lehigh is in the actual Federal Register publication found at 47 FR 43811-03.

Line 503A as an alternative through route between Allentown and Lehigh, <sup>6</sup> while at the same time gaining access to customers along the Lehigh Segment that it was not permitted to serve under the terms of the 1979 Agreement.

Finally, if Conrail received no bona fide offer under the applicable OFA standards, Conrail would be free to “abandon or dispose of the line as it chooses” (excepting for the removal of bridges or certain other structures for an additional 120-day period). 45 U.S.C. § 748(e)(3)(B).

Section 748 makes no mention of trackage rights or trackage rights holders nor does it mandate the independent termination of any such trackage rights tenancies as a precondition to Conrail’s abandonment. (The ICC would have recognized that reading chapter 109 legal principles concerning trackage rights tenancies into the 3-R Act would have placed Conrail in a position where it may have been required to subsidize D&H’s operations on line’s that Conrail found uneconomical to retain – a result clearly inconsistent with the Congressional purpose behind 3-R Act abandonments in the first place.) As such, it would have been contrary to the language of the statute to introduce chapter 109 legal constructs concerning trackage rights tenancies into a 3-R Act abandonment process. For these reasons, RJC submits that the termination of D&H’s trackage rights over Conrail’s Line 503A also was subject exclusively to the OFA safeguards of Section 748, and that D&H’s decision to forfeit that safeguard resulted in the legal termination of its trackage rights over Line 503A.

In light of the above discussion, one can appreciate why, as part of its Application, Conrail – (1) advised the ICC of D&H’s trackage rights tenancy on Line 503A; and (2) stated its willingness to sell the Lehigh Segment to D&H “under the procedures and

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<sup>6</sup> As discussed below, D&H by that time was relying primarily, if not exclusively, on another Conrail-owned line between Allentown and Lehigh, so RJC suspects that D&H’s objection stemmed from opportunism.

standards” at Sections 748(d) and (e) “in the event that D&H wishes to purchase the [Lehighon Segment].”<sup>7</sup> Because it appears that the 3-R Act’s OFA provisions were D&H’s only remedy, the ICC did not (and legally could not) precondition Conrail’s abandonment upon D&H securing trackage rights discontinuance authority. And D&H’s objection seems especially unpersuasive, since D&H appears to have been aware of Conrail’s abandonment proposal, knew or reasonably should have known that its Line 503A trackage rights would be severed and thus nullified unless it acted to acquire the Lehighon Segment at discounted NLV, and also knew that it could rely on its trackage rights over a parallel-running line segment (the latter issue garnering no attention in D&H’s objection filing).<sup>8</sup> In short, RJC believes that, in interpreting the 3-R Act provisions, the ICC did not allow D&H to block Conrail’s effectuation of the proposed abandonment by requiring D&H first to obtain (at D&H’s discretion) trackage rights discontinuance authority in a separate docket.

None of the parties here disputes that at some point after the conclusion of the Sub-No. 451N proceeding, Conrail dismantled the track comprising the Lehighon Segment. Either Conrail’s removal of the track – (1) was legally accomplished by virtue of the appropriate reliance upon Section 748; or (2) was accomplished in good faith, but based upon the ICC’s misinterpretation of the 3-R Act.

Riffin’s Initial Comments seem to invite the Board to reopen and revisit the 1981 Sub-No. 451N proceeding, and to invite the Board to substitute its judgment for that of the ICC on the issue of D&H’s trackage rights on Line 503A. If so, then Riffin is arguing, at bottom, that the Board should find that the ICC either overlooked the D&H trackage rights element of the

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<sup>7</sup> See numbered page two of Conrail’s Application, included as an unnumbered attachment to the Comments.

<sup>8</sup> D&H also would have understood that Conrail’s abandonment would render its tenancy on the balance of Line 503A a nullity, given the overhead nature of D&H’s rights over it.

proceeding (which is highly unlikely), or that the ICC misinterpreted and misapplied Section 748 and the OFA safeguards set forth therein as overriding conventional chapter 109 trackage rights termination considerations. Either conclusion would be an incredibly presumptuous and highly questionable thing for the Board to do. But then consider who's asking and why.

**B. D&H Did Not Require Discontinuance Authority To Rely Exclusively On Overhead Trackage Rights On A Parallel Running Line Over Which It Continued to Operate**

Assuming arguendo that the applicable 3-R Act abandonment provisions, in isolation of other facts, did not clear Conrail to abandon the Lehigh Segment absent formal discontinuance of D&H's trackage rights, then the particular circumstances here and agency precedent establish nevertheless that D&H would not have needed formal discontinuance authority to terminate its use of Line 503A. Specifically, the D&H was free to relinquish its rights over Line 503A without ICC permission because it had, and appears to have opted ultimately to rely exclusively upon, trackage rights over a parallel-running Conrail line located on the opposite side of the Lehigh River also linking Allentown and Lehigh. (The alternative trackage rights route along the east bank of the Lehigh upon which D&H relied after abandonment of the Lehigh Segment is, not coincidentally, subsumed within D&H's pending trackage rights discontinuance notice of exemption filed in Docket No. AB-156 (Sub-No. 27X).)

Prior to 1982, Conrail possessed two parallel-running rail lines linking Allentown and Lehigh – Line 503A on the west side of the Lehigh River and USRA Lines 502F/521 along the east bank.<sup>9</sup> We also know from the record (as Conrail indicated in its Application) that D&H possessed overhead trackage rights over both routes, and that, by the time Conrail filed its Application, Line 503A had fallen into disfavor such that the parallel-running Line 502F/521

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<sup>9</sup> Exhibit A (page 3 of 3; bates-numbered page 115) of the 1979 Agreement appended to the Initial Comments refers to Lines "0502F" and "0521" comprising a line of railroad running from Bethlehem Junction (via Allentown and Allentown Yard) to Lehigh.

was being “used by both [Conrail and D&H] to a far greater extent than” Line 503A. In effect, D&H possessed overhead trackage rights over what was, for D&H’s purposes at least, a double track route between Allentown and Lehigh. Thus, if D&H ultimately acquiesced in Conrail’s abandonment of the Lehigh Segment (or forfeited its 3-R Act protections by foregoing purchase under the adjusted NLV), then D&H surely accepted that its needs could sufficiently be met by relying exclusively on a single-track route (Line 502F/521) along the east bank of the Lehigh going forward.

Analogous Board precedent supports the proposition that D&H needed no advance regulatory authority to forego the double-track operation it enjoyed prior to abandonment of Line 503A. This is so because – (1) D&H one way or the other had to rely on what could be viewed as a modified single-track route (Line 502F/521) that D&H evidently accepted was adequate for such purposes; and (2) termination of D&H operations on Line 503A had no material impact upon shippers (the 1979 Agreement barred D&H from serving shippers along Line 503A), and could not reasonably be regarded as an exit from any market in which D&H had theretofore participated.<sup>10</sup> Since it appears that D&H accepted that it would have to rely upon Line 502F/521 exclusively between Allentown and Lehigh for purposes of D&H’s overhead traffic movements going forward, then a Board (or ICC) finding requiring D&H to get discontinuance authority before relinquishing its rights over Line 503A would elevate form over

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<sup>10</sup> Cf. Union Pacific Railroad Company – Petition for Declaratory Order – Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX, 3 S.T.B. 646; STB Docket No. FD 33611 (STB served Aug. 21, 1998) (reactivation of a parallel-running line to be used to supplement capacity on an existing single-track route between common terminal points did not require STB construction or “entrance” authority because, even though the reactivated line was at some points up to 1.75 miles removed from the existing line, the line reactivation would not result in new market access, and thus was tantamount to the construction of an additional track to enable the railroad to benefit from the equivalent of double-track capacity). Logically, then, a subsequent decision by UP to “de-activate” the former M-K-T route that was the subject of the above-cited case also would not require Board-issued “exit” authority.

substance to the extreme, considering that no D&H customer would lose access to that railroad's through service as a result of such discontinuance.

**C. If The Board Finds That D&H Needed Discontinuance Authority To Quit Line 503A, Then Board Should Grant D&H Such Discontinuance Authority Retroactive To The Date Conrail Abandoned The Lehigh Segment**

Should the Board agree with Riffin that, despite the foregoing discussion, RJC finds itself in a "morass" of Conrail's and/or the ICC's making, then the morass can easily enough be resolved without undue delay and complication if the Board so chooses.

The record here indicates that D&H – (1) was aware of Conrail's Lehigh Segment abandonment; (2) unsuccessfully opposed that abandonment; (3) elected to forego its OFA purchase rights under the 3-R Act process; and (4) shifted all of its trackage rights trains to Line 502F/521 at such time as (or before) Conrail severed Line 503A. D&H did not need Line 503A. A Board ruling that the ICC failed properly to address D&H's termination of operations on Line 503A, without more, would do nothing to promote the public interest here. Instead, such a finding, by itself, would subject RJC (an innocent role-player)<sup>11</sup> and D&H (who has no interest in such trackage rights, assuming they still existed as a matter of law) to otherwise avoidable, and utterly unnecessary, regulatory hardship. Were the Board to render such a peculiar finding, then RJC urges the Board to take the next step and grant D&H an exemption from the discontinuance processes retroactive to Conrail's abandonment of Line 503A. Such retroactive relief would be entirely appropriate and consistent with the agency's actions in other cases.<sup>12</sup>

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<sup>11</sup> Although not determinative of any issues here, RJC has examined its agreements with Conrail from 1996 governing RJC's purchase of the Line, and has confirmed that those documents contain no reference to D&H-held trackage rights.

<sup>12</sup> See BNSF Railway Company – Petition for Declaratory Order, Docket No. FD 35164 (STB served May 20, 2009), slip op at 10:

The Board may grant exemptions [including abandonment and discontinuance exemptions] on its own initiative. See 49 U.S.C. 10502(b); e.g., Consolidated Railway Corporation—Abandonment Exemption—

Of course the “retroactive exemption” alternative that RJC has set forth above is not, technically, RJC’s to seek. Rather, RJC would expect D&H to endorse or request such relief. In that regard, RJC has already been in touch with D&H concerning the issues presented in this case, and RJC has vetted this Reply filing with D&H on the understanding and expectation that D&H will either separately share its views on the Initial Comments or endorse and adopt for itself the arguments and requests for relief contained herein.

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in Mercer County, NJ, STB Docket No. AB-167 (Sub-No. 1185X), et al. (STB served Jan. 26, 2007) (granting discontinuance of service exemption sua sponte); BNSF Railway Company—Abandonment Exemption—in Oklahoma County, OK, STB Docket No. AB-6 (Sub-No. 430X), slip op. at 5 (STB served Jan. 22, 2007) (same);

and see also, e.g., Horsehead Corporation – Petition for Acquisition and Operation Exemption – Chestnut Ridge Railway Company, Docket No. FD 34481 (STB served Mar. 12, 2004), slip op. at 2 (retroactive exemptions are generally not preferred, but the agency will grant them on occasion in appropriate circumstances) (citing Brotherhood of Maintenance of Way Employees, et al. v. Soo Line Railroad, et al., STB Finance Docket No. 32964, et al. (STB served Dec. 22, 1998).

## CONCLUSION

There is no "Conrail morass" and no need for the Board to delay its assessment of the merits of RJC's abandonment petition for exemption in this docket. For the reasons set forth above, the Board should find that, under the particular facts and circumstances under which Conrail sought and obtained authority to abandon the Lehighon Segment, D&H's trackage rights were legally terminated (if indeed there were any need for such termination in the first place) contemporaneous with Conrail's abandonment of the Lehighon Segment. And even if the Board were to find that the ICC erred in allowing the abandonment to be effectuated despite the presence of D&H trackage rights, then the Board should consider granting D&H retroactive relief upon D&H's request for the same. Accordingly, the Board should render its decision on the merits in this proceeding as planned by or before August 19, 2015.

Respectfully submitted,

By:   
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Audrey L. Brodrick  
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rwimbish@fletcher-sippel.com

**ATTORNEY FOR R.J. CORMAN RAILROAD  
COMPANY/ALLENTOWN LINES, INC.**

Dated: June 10, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

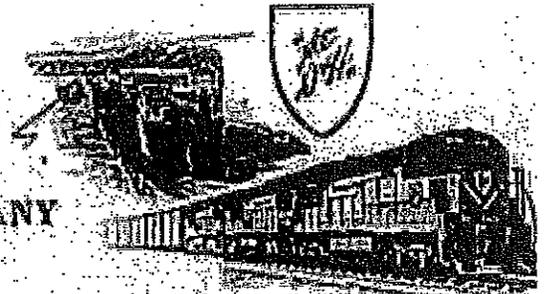
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**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

**EXHIBIT A**

# DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207



*Dependable Transportation Since 1825*

**KINGA M. LACHAPPELLE**

*General Attorney*

February 25, 1982

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RE: CONSOLIDATED RAIL CORPORATION'S APPLICATION UNDER SECTION 308 OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973, AS ENACTED BY SECTION 1156 OF THE NORTHEAST RAIL SERVICE ACT OF 1981, FOR ABANDONMENT OF THE LEHIGHTON SECONDARY TRACK IN THE STATE OF PENNSYLVANIA DOCKET NO. AB 167 (SUB-NO. 451N)

Dear Mrs. Mergenovich:

Enclosed please find original and six copies of Delaware and Hudson Railway Company's (D&H's) statement concerning the above application of Consolidated Rail Corporation (Conrail) to abandon the Lehighton Secondary Track.

Such statement is filed with the Commission both to request relief and to call attention to the fact that D&H is a common carrier which has operating rights over the line in question pursuant to rights granted D&H under the Regional Rail Reorganization Act of 1973 (RR Act).

Very truly yours,

Encl.

cc: Wayne Michel, Esq. *W. Michel*  
Room 5420  
Interstate Commerce Commission

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

CONSOLIDATED RAIL CORPORATION'S  
APPLICATION UNDER SECTION 308 OF  
THE REGIONAL RAIL REORGANIZATION  
ACT OF 1973, AS ENACTED BY SEC-  
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SERVICE ACT OF 1981, FOR ABANDON-  
MENT OF THE LEHIGHTON SECONDARY  
TRACK IN THE STATE OF PENNSYLVANIA

INTERSTATE  
COMMERCE COMMISSION

MAR 3 1982  
ADMINISTRATIVE SERVICES  
MAIL UNIT

DOCKET NO. AB 167 (SUB-NO. 451N)

STATEMENT OF  
DELAWARE AND HUDSON RAILWAY COMPANY

Kinga M. LaChapelle  
Attorney for Delaware  
and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207

Dated: February 25, 1982

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

CONSOLIDATED RAIL CORPORATION'S  
APPLICATION UNDER SECTION 308 OF  
THE REGIONAL RAIL REORGANIZATION  
ACT OF 1973, AS ENACTED BY SEC-  
TION 1156 OF THE NORTHEAST RAIL  
SERVICE ACT OF 1981, FOR ABANDON-  
MENT OF THE LEHIGHTON SECONDARY  
TRACK IN THE STATE OF PENNSYLVANIA

DOCKET NO. AB 167 (SUB-NO. 451N)

STATEMENT OF  
DELAWARE AND HUDSON RAILWAY COMPANY

Comes now Delaware and Hudson Railway Company (D&H) making this statement whereby it requests that the Commission in keeping with its authority to regulate the rail service over the Lehighton Secondary Track (Subject Line), restrict any proposed disposition by Consolidated Rail Corporation (Conrail) of the properties and appurtenances involved in the Application for Abandonment of the Subject Line, in the above designated proceeding.

1. D&H is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission and to the

provisions of the Interstate Commerce Act (Title 49 U.S.C. Subtitle IV) with its principal office located at 40 Beaver Street, Albany, New York 12207.

2. Conrail is a common carrier by rail subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Interstate Commerce Act (Title 49 U.S.C. Subtitle IV) with its principal offices located at 6 Penn Center Plaza, Philadelphia, Pennsylvania 19104.

3. D&H has operating rights over the Subject Line pursuant to trackage rights granted it by Conrail's predecessor in title the Trustees of the former Lehigh Valley RR Co. and Lehigh Coal and Navigation Company.

4. Title to the Subject Line was granted to Conrail subject to the trackage rights granted to D&H.

5. The rights were granted to D&H pursuant to provisions of the Regional Rail Reorganization Act of 1973 (JR Act) and were authorized by the Special Court as well as approved by the Commission.

6. On April 25, 1979 Conrail and D&H entered into a thirty year agreement specifying, among other items, the charges to be paid by D&H for operating over the Subject Line. A copy of said agreement will be filed should the Commission so require.

7. Pursuant to said agreement Conrail has the contractual duty to maintain the line.

8. Pursuant to the provisions of the Northeast Rail Service Act of 1981 (NERSA) Conrail seeks to abandon the Subject Line and in the event no offer of financial assistance is made, the Application is likely to be granted.

9. D&H does not specifically object to Conrail's abandonment of its own service over the line but D&H wants to make certain that neither the duties imposed on Conrail by the grant of trackage rights to D&H nor the duties undertaken by Conrail in the April 25, 1979 agreement are abrogated.

10. D&H as a carrier subject to the Commission's authority may not abandon its trackage rights over the Subject Line without permission and D&H is not seeking such permission.

11. Whatever Conrail may be permitted to do to dispose of the Subject Line to a potential purchaser under NERSA, and pursuant to NERSA's provisions by the Commission, must be conditioned by, and be subject to, D&H's existing rights in the Subject Line.

12. D&H makes this statement both to request relief and to clarify its position to Conrail, the Commission and to any potential purchaser, that D&H asserts its rights under the grant and does not intend that any existing D&H rights be impaired through the actions of Conrail or third parties.

13. Although Conrail under NERSA has wide latitude to abandon lines, discontinue service and dispose of property, Conrail can only dispose of its share of any property it owns. It does not have a right of exclusive possession of the track and appurtenances of the Subject Line. D&H's interests and rights in the continued integrity of the rail facility may not be abrogated.

14. The Commission, although it is limited in its authority to control Conrail's abandonment of any lines to which Conrail has unencumbered title, is not so limited with respect to D&H. The Commission retains its traditional authority under the Interstate Commerce Act (Now 49 U.S.C. Subtitle IV) to protect the integrity of D&H's rights and operations. In keeping with its authority, the Commission may restrict the disposition of property used or usable in interstate commerce by a carrier subject to its jurisdiction (D&H) even though the owner of the property (Conrail) in its capacity as owner may not be subject to Commission authority. The limitation on the Commission's jurisdiction over Conrail abandonments imposed by NERSA does not apply to the Commission's authority over Conrail as the owner of encumbered property used or usable in interstate commerce by another carrier. The purpose of NERSA was to lift the burden from Conrail of the necessity to render unprofitable common carrier service, not to free it from its contractual obligations as landlord.

Therefore, D&H requests that the Commission order Conrail to refrain from disposing of the Subject Line and to refrain from disposing of any rail properties or dismantling any facilities used or usable in rail service which are appurtenant to the Subject Line or lines over which D&H has statutory trackage rights, unless arrangements satisfactory to D&H and the Commission have been made to assure that D&H's operations over the Subject Line will be unimpaired.

Respectfully submitted  
on behalf of Delaware and  
Hudson Railway Company.

By \_\_\_\_\_  
Rigon H. LaChapelle  
General Attorney

STATE OF NEW YORK }  
COUNTY OF ALBANY } ss.:

W. W. COLLINS, being duly sworn, deposes and says:  
That he is Vice President-Administration and Strategic  
Planning of Delaware and Hudson Railway Company in the  
above entitled proceeding; that he has read the foregoing  
statement and knows the contents thereof; that the same  
is true to his own knowledge, except as to the matters  
therein alleged upon information and belief, and that as  
to those matters he believes it to be true.

He further says that this verification is made by  
him for the reason that the said Delaware and Hudson Railway  
Company is a corporation and he is an officer thereof, to wit:  
its Vice President Administration and Strategic Planning.

W. W. Collins

Sworn to before me this 25th  
day of February 1982.

[Signature]  
Notary Public  
State of New York

George H. [unclear]  
Notary Public  
Qualified in the State of New York  
Commission Expires [unclear] 1983

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of February, 1982, served a copy of the foregoing document upon all parties listed below by first class mail, properly addressed with postage prepaid.

The Honorable, Richard L. Thornburgh  
Governor, Commonwealth of Pennsylvania  
State Capitol  
Harrisburg, PA 17120

Pennsylvania DOT  
1200 Transportation and Safety Bldg.  
Harrisburg, PA 17120

Public Utilities Commission  
P. O. Box 3265  
Harrisburg, PA 17120

Rail Services Planning Office  
1500 L Street NW  
Washington, DC 20036

Federal Railroad Administration  
400 Seventh Street SW  
Washington, DC 20036

Office of Proceedings, ICC  
12th & Constitution Avenue, NW  
Washington, DC 20423

Director, Extension Service  
Dr. J. N. Gentile  
Agrl. Administration Bldg.  
Pennsylvania State University  
University Park, PA 16802

Department of Interior  
National Park Service  
18th and C Streets, N.W.  
Washington, D.C. 20240

Office of Special Counsel  
Interstate Commerce Commission  
Washington, D.C. 20425

Military Traffic Management Command  
Nasiff Building - Room 720  
STOP 105 MI-SA  
Washington, D.C. 20315

National Railroad Passenger Corporation  
400 North Capitol Street, N.W.  
Washington, D.C. 20001

Railroad Retirement Board  
844 Rush Street  
Chicago, Illinois 60611

Railway Labor Executives' Association  
Railway Labor Building  
400 1st Street, N.W.  
Washington, D.C. 20001

Charles E. Nechen  
General Attorney  
Consolidated Rail Corporation  
1138 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

Pfizer Company, Inc.  
Lehigh Gap R. D. 4  
Slatington, PA 18080

Prince Manufacturing Company  
700 Lehigh Street  
Bowmanstown, PA 18030

Pennsylvania Plant Food  
Lehighton, PA 18235

Eckman Lumber Company  
R. D. #1  
Lehighton, PA 18235

H. D. Hartman Lumber  
Blakelee Boulevard  
Lehighton, PA 18235

Whitehall Cement Company  
5100 Main Street  
Cressport, PA 18502

H. E. Orkin Company, Inc.  
375 Cherry Street  
Clatsington, PA 18080

Blue Rock Materials  
Clatsington, PA 18080

A. J. Henry Lumber Company  
50 West Park Avenue  
Clatsington, PA 18085

Keystone Lamp Mfg. Company  
R. D. 84  
Clatsington, PA 18080

---

Wanda M. Luchetta

Sworn to before me this  
day of

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Notary Public  
State of New York

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

---

**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

**EXHIBIT B**

EPB

INTERSTATE COMMERCE COMMISSION

CERTIFICATE AND DECISION

Case No. AB-157 (Sub-No. 4518)

SERVICE DATE

MAR 11 1982

CONRAIL ABANDONMENT BETWEEN CATASAUQUA AND LEIGHTON, PA

Decided: February 25, 1982

On November 30, 1981, Consolidated Rail Corporation (Conrail) filed an application pursuant to section 308 of the Regional Rail Reorganization Act of 1973<sup>1/</sup> to abandon 21.3 miles of its rail line between Catasauqua (milepost 98.0) and Leighton (milepost 119.3) in Lehigh and Carbon Counties, PA.

Under section 308(b) the Commission must grant any application for abandonment filed by Conrail before December 1, 1981, within 90 days after the date such application is filed unless an offer of financial assistance is made pursuant to section 308(d) during that 90-day period. Because no offer of financial assistance has been received, the application is granted.

Congress has directed the Commission to appraise the net liquidation value of each Conrail line being abandoned. Under Section 308(e) any interested party would be able to purchase such a line at 75 percent of the value set by the Commission.

With its application Conrail submitted a statement that its estimate of the line's net liquidation value is \$1,556,528.

The Commission intends to adopt this estimate unless, within 15 days from date of service of this order, an interested party requests that the Commission independently appraise the line. If such a request is made, the Commission will, as soon as practicable, set a value for the line based on any information available. That determination will be published in the Federal Register and is not appealable. If no request is made the Commission will publish Conrail's estimate in the Federal Register.

If any interested parties have pertinent data on the net liquidation value of this line, they should submit it to the Commission's Section of Finance, Room 5814, 12th and Constitution Ave., NW., Washington, DC 20423.

<sup>1/</sup> This section was added by the Northeast Rail Service Act of 1981. Pub. L. 97-35.

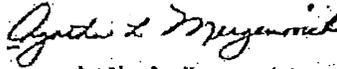
Docket No. AB-167 (Sub-No. 451H)

It is certified: Council is authorized to abandon the line described above.

It is ordered:

The certificate and decision are effective upon service.

By the Commission, Review Board Number 3, Members Krook, Joyce and Dowell.



Agatha L. Mergenovich  
Secretary

(SEAL)



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

---

**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

**EXHIBIT C**

analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes, including an analysis of any Federal funding that would be required, and directed the Corporation, not later than Jan. 15, 1981, to submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, Pub. L. 96-448, Oct. 14, 1980, 94 Stat. 1895, its projections of changes needed in the structure of the rail system of the Corporation, including properties which might be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (b) and (c)(4)(B) of this section relating to the requirement that the Association submit annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 11th and 12th items on page 195 of House Document No. 103-7.

#### ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

#### APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

### § 748. Abandonments

#### (a) General

The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49.

#### (b) Applications for abandonment

Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

#### (c) Notice of insufficient revenues

(1) The Corporation may, prior to November 1, 1985, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

#### (d) Offers of financial assistance

(1) The provisions of section 10904 of title 49 (including the timing requirements of sub-

section (d) thereof) shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

#### (e) Liquidation

(1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) Appraisals made under paragraph (1) shall not be appealable.

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 8 months if he assumes all liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.

#### (f) Employee protection

The provisions of section 10903(b)(3)<sup>1</sup> of title 49 shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of subchapter V<sup>2</sup> of this chapter immediately prior to August 13, 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 797<sup>2</sup> of this title.

(Pub. L. 93-236, title III, § 308, as added Pub. L. 97-35, title XI, § 1156(a), Aug. 13, 1981, 95 Stat. 679; amended Pub. L. 98-181, title II, § 2003(c)(2), Nov. 30, 1983, 97 Stat. 1298; Pub. L. 104-88, title III, § 327(4), Dec. 29, 1995, 109 Stat. 952.)

#### REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (f), was repealed by Pub. L. 97-35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

<sup>1</sup>So in original. Section 10903(b) of Title 49, Transportation, does not contain a par. (3).

<sup>2</sup>See References in Text note below.

Section 797 of this title, referred to in subsec. (f), was repealed by Pub. L. 99-509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

#### AMENDMENTS

1995—Subsec. (d)(1). Pub. L. 104-88, § 327(4)(A), substituted "section 10904" for "section 10905(d)-(f)".

Subsec. (f). Pub. L. 104-88, § 327(4)(B), substituted "section 10903(b)(3)" for "section 10903(b)(2)".

1983—Subsec. (c)(1). Pub. L. 98-181 substituted "1985" for "1983".

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

#### EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as a note under section 1101 of this title.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

#### SUBCHAPTER IV—TRANSFER OF FREIGHT SERVICES

##### §§ 761 to 769c. Repealed. Pub. L. 99-509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908

Section 761, Pub. L. 93-236, title IV, § 401, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 654, related to sale of interest of United States in common stock of Consolidated Rail Corporation.

A prior section 761, Pub. L. 93-236, title IV, § 401, Jan. 2, 1974, 87 Stat. 1010, related to Congressional findings and purpose in providing for a program of rail service continuation subsidies, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 762, Pub. L. 93-236, title IV, § 402, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to debt and preferred stock of Consolidated Rail Corporation.

A prior section 762, Pub. L. 93-236, title IV, § 402, Jan. 2, 1974, 87 Stat. 1010; Pub. L. 93-488, § 1(d), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94-210, title VIII, § 805(a), Feb. 5, 1976, 90 Stat. 139, directed Secretary to provide financial assistance to States and local or regional transportation authorities in facilitating and maintaining main line or local rail service, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 763, Pub. L. 93-236, title IV, § 403, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to determinations about profitability of Consolidated Rail Corporation.

A prior section 763, Pub. L. 93-236, title IV, § 403, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 93-488, § 1(e), Oct. 26, 1974, 88 Stat. 1465; Pub. L. 94-210, title VIII, § 805(b), (c), Feb. 5, 1976, 90 Stat. 142, authorized Association to provide loans for acquisition of rail properties by States or local or regional transportation authorities and for modernization of those acquired properties, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 764, Pub. L. 93-236, title IV, § 404, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 656, related to failure to sell interest of United States in common stock of Consolidated Rail Corporation as an entity.

Section 765, Pub. L. 93-236, title IV, § 405, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 657, related to plans to transfer Consolidated Rail Corporation's freight rail properties and service responsibilities.

Section 766, Pub. L. 93-236, title IV, § 406, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to consolidation and review of freight transfer agreements.

Section 767, Pub. L. 93-236, title IV, § 407, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to public comment and Congressional notification regarding freight transfer agreements.

Section 768, Pub. L. 93-236, title IV, § 408, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, related to performance under freight transfer agreements.

Section 769, Pub. L. 93-236, title IV, § 409, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, provided that conveyance of interest in rail properties under freight transfer agreement is deemed to be an assignment.

Section 769a, Pub. L. 93-236, title IV, § 410, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 660, related to identification and sale of unprofitable subsidiaries of Consolidated Rail Corporation.

Section 769b, Pub. L. 93-236, title IV, § 411, as added Pub. L. 97-35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 672, related to labor transfer agreements.

Section 769c, Pub. L. 93-236, title IV, § 412, as added Pub. L. 97-35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 673, related to labor protection benefits.

#### SUBCHAPTER V—EMPLOYEE PROTECTION

##### §§ 771 to 780. Repealed. Pub. L. 97-35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669

Section 771, Pub. L. 93-236, title V, § 501, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 94-210, title VI, §§ 607(1), 613, Feb. 5, 1976, 90 Stat. 97, 112; Pub. L. 94-248, § 5, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94-555, title II, § 207(a), Oct. 19, 1976, 90 Stat. 2621; Pub. L. 96-448, title V, § 508(d), Oct. 14, 1980, 94 Stat. 1957, set forth provisions defining terms applicable to employee protection rights.

Section 772, Pub. L. 93-236, title V, § 502, Jan. 2, 1974, 87 Stat. 1013; Pub. L. 94-210, title VI, § 614, Feb. 5, 1976, 90 Stat. 112, set forth provisions respecting employment offers.

Section 773, Pub. L. 93-236, title V, § 503, Jan. 2, 1974, 87 Stat. 1014, related to assignment of work.

Section 774, Pub. L. 93-236, title V, § 504, Jan. 2, 1974, 87 Stat. 1014; Pub. L. 94-210, title VI, § 615, Feb. 5, 1976, 90 Stat. 113; Pub. L. 94-555, title II, §§ 207(b), 208, Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96-448, title V, § 506, Oct. 14, 1980, 94 Stat. 1956, set forth provisions respecting collective bargaining agreements.

Section 775, Pub. L. 93-236, title V, § 505, Jan. 2, 1974, 87 Stat. 1015; Pub. L. 94-210, title VI, § 616(a)-(g), Feb. 5, 1976, 90 Stat. 115, 116; Pub. L. 94-555, title II, §§ 209, 210, Oct. 19, 1976, 90 Stat. 2623; Pub. L. 96-448, title V, §§ 501-503, Oct. 14, 1980, 94 Stat. 1948-1954, set forth provisions relating to employee protection programs.

Section 776, Pub. L. 93-236, title V, § 506, Jan. 2, 1974, 87 Stat. 1019, related to contracting out of work.

Section 777, Pub. L. 93-236, title V, § 507, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 96-448, title V, § 508(c), Oct. 14, 1980, 94 Stat. 1957, related to arbitration of disputes or controversies.

Section 778, Pub. L. 93-236, title V, § 508, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94-210, title VI, § 617, Feb. 5, 1976, 90 Stat. 117, related to duties of acquiring and selling railroads.

Section 779, Pub. L. 93-236, title V, § 509, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94-210, title VI, § 616(h), Feb. 5,

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

---

**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

**EXHIBIT D**

## NOTICES

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-451N)]

Rail Carriers; Conrail Abandonment Between **Catasauqua** and Leighton, PA; Findings

Monday, October 4, 1982

\*43811 Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate and decision authorizing the **Consolidated Rail Corporation** to abandon its rail line between **Catasauqua**, milepost 98.0 and Leighton, milepost 119.3 in the Counties of Lehigh and Carbon, PA, a total distance of 21.3 miles effective on March 11, 1982.

The net liquidation value of this line is \$1,647,927. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27186 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

47 FR 43811-03, 1982 WL 121230 (F.R.)  
END OF DOCUMENT

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, June 10, 2015, a copy of the foregoing Reply of R.J. Corman Railroad Company/Allentown Lines, Inc. to James Riffin's "Initial Comments" was served via first class mail, postage prepaid, and by more expeditious means of delivery upon the following party (who is the only party of record aside from counsel for R.J. Corman Railroad Company/Allentown Lines, Inc.):

James Riffin  
P. O. Box 4044  
Timonium, MD 21094  
jimriffin@yahoo.com

June 10, 2015



Robert A. Wimbish  
Attorney for R.J. Corman Railroad  
Company/Allentown Lines, Inc.

Whitehall Cement Company  
5100 Main Street  
Cressport, PA 18502

H. E. Orkin Company, Inc.  
375 Cherry Street  
Clatsington, PA 18080

Blue Rock Materials  
Clatsington, PA 18080

A. J. Henry Lumber Company  
50 West Park Avenue  
Clatsington, PA 18085

Keystone Lamp Mfg. Company  
R. D. 84  
Clatsington, PA 18080

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Wanda M. Luchatella

Sworn to before me this  
day of

---

Notary Public  
State of New York

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-550 (SUB-NO. 3X)  
R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
-- ABANDONMENT EXEMPTION --  
IN LEHIGH COUNTY, PA.

---

**REPLY OF R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.  
TO JAMES RIFFIN'S "INITIAL COMMENTS"**

**EXHIBIT B**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**EXHIBIT C**

analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes, including an analysis of any Federal funding that would be required, and directed the Corporation, not later than Jan. 15, 1981, to submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, Pub. L. 96-448, Oct. 14, 1980, 94 Stat. 1895, its projections of changes needed in the structure of the rail system of the Corporation, including properties which might be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (b) and (c)(4)(B) of this section relating to the requirement that the Association submit annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 11th and 12th items on page 195 of House Document No. 103-7.

#### ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

#### APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

### § 748. Abandonments

#### (a) General

The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49.

#### (b) Applications for abandonment

Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

#### (c) Notice of insufficient revenues

(1) The Corporation may, prior to November 1, 1985, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

#### (d) Offers of financial assistance

(1) The provisions of section 10904 of title 49 (including the timing requirements of sub-

section (d) thereof) shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

#### (e) Liquidation

(1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) Appraisals made under paragraph (1) shall not be appealable.

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 8 months if he assumes all liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.

#### (f) Employee protection

The provisions of section 10903(b)(3)<sup>1</sup> of title 49 shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of subchapter V<sup>2</sup> of this chapter immediately prior to August 13, 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 797<sup>2</sup> of this title.

(Pub. L. 93-236, title III, § 308, as added Pub. L. 97-35, title XI, § 1156(a), Aug. 13, 1981, 95 Stat. 679; amended Pub. L. 98-181, title II, § 2003(c)(2), Nov. 30, 1983, 97 Stat. 1298; Pub. L. 104-88, title III, § 327(4), Dec. 29, 1995, 109 Stat. 952.)

#### REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (f), was repealed by Pub. L. 97-35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

<sup>1</sup>So in original. Section 10903(b) of Title 49, Transportation, does not contain a par. (3).

<sup>2</sup>See References in Text note below.

Section 797 of this title, referred to in subsec. (f), was repealed by Pub. L. 99-509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

#### AMENDMENTS

1995—Subsec. (d)(1). Pub. L. 104-88, § 327(4)(A), substituted "section 10904" for "section 10905(d)-(f)".

Subsec. (f). Pub. L. 104-88, § 327(4)(B), substituted "section 10903(b)(3)" for "section 10903(b)(2)".

1983—Subsec. (c)(1). Pub. L. 98-181 substituted "1985" for "1983".

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

#### EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as a note under section 1101 of this title.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

#### SUBCHAPTER IV—TRANSFER OF FREIGHT SERVICES

#### §§ 761 to 769c. Repealed. Pub. L. 99-509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908

Section 761, Pub. L. 93-236, title IV, § 401, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 654, related to sale of interest of United States in common stock of Consolidated Rail Corporation.

A prior section 761, Pub. L. 93-236, title IV, § 401, Jan. 2, 1974, 87 Stat. 1010, related to Congressional findings and purpose in providing for a program of rail service continuation subsidies, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 762, Pub. L. 93-236, title IV, § 402, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to debt and preferred stock of Consolidated Rail Corporation.

A prior section 762, Pub. L. 93-236, title IV, § 402, Jan. 2, 1974, 87 Stat. 1010; Pub. L. 93-488, § 1(d), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94-210, title VIII, § 805(a), Feb. 5, 1976, 90 Stat. 139, directed Secretary to provide financial assistance to States and local or regional transportation authorities in facilitating and maintaining main line or local rail service, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 763, Pub. L. 93-236, title IV, § 403, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to determinations about profitability of Consolidated Rail Corporation.

A prior section 763, Pub. L. 93-236, title IV, § 403, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 93-488, § 1(e), Oct. 26, 1974, 88 Stat. 1465; Pub. L. 94-210, title VIII, § 805(b), (c), Feb. 5, 1976, 90 Stat. 142, authorized Association to provide loans for acquisition of rail properties by States or local or regional transportation authorities and for modernization of those acquired properties, prior to repeal by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 764, Pub. L. 93-236, title IV, § 404, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 656, related to failure to sell interest of United States in common stock of Consolidated Rail Corporation as an entity.

Section 765, Pub. L. 93-236, title IV, § 405, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 657, related to plans to transfer Consolidated Rail Corporation's freight rail properties and service responsibilities.

Section 766, Pub. L. 93-236, title IV, § 406, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to consolidation and review of freight transfer agreements.

Section 767, Pub. L. 93-236, title IV, § 407, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to public comment and Congressional notification regarding freight transfer agreements.

Section 768, Pub. L. 93-236, title IV, § 408, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, related to performance under freight transfer agreements.

Section 769, Pub. L. 93-236, title IV, § 409, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, provided that conveyance of interest in rail properties under freight transfer agreement is deemed to be an assignment.

Section 769a, Pub. L. 93-236, title IV, § 410, as added Pub. L. 97-35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 660, related to identification and sale of unprofitable subsidiaries of Consolidated Rail Corporation.

Section 769b, Pub. L. 93-236, title IV, § 411, as added Pub. L. 97-35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 672, related to labor transfer agreements.

Section 769c, Pub. L. 93-236, title IV, § 412, as added Pub. L. 97-35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 673, related to labor protection benefits.

#### SUBCHAPTER V—EMPLOYEE PROTECTION

#### §§ 771 to 780. Repealed. Pub. L. 97-35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669

Section 771, Pub. L. 93-236, title V, § 501, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 94-210, title VI, § 607(1), 613, Feb. 5, 1976, 90 Stat. 97, 112; Pub. L. 94-248, § 5, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94-555, title II, § 207(a), Oct. 19, 1976, 90 Stat. 2621; Pub. L. 96-448, title V, § 508(d), Oct. 14, 1980, 94 Stat. 1957, set forth provisions defining terms applicable to employee protection rights.

Section 772, Pub. L. 93-236, title V, § 502, Jan. 2, 1974, 87 Stat. 1013; Pub. L. 94-210, title VI, § 614, Feb. 5, 1976, 90 Stat. 112, set forth provisions respecting employment offers.

Section 773, Pub. L. 93-236, title V, § 503, Jan. 2, 1974, 87 Stat. 1014, related to assignment of work.

Section 774, Pub. L. 93-236, title V, § 504, Jan. 2, 1974, 87 Stat. 1014; Pub. L. 94-210, title VI, § 615, Feb. 5, 1976, 90 Stat. 113; Pub. L. 94-555, title II, § 207(b), 208, Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96-448, title V, § 506, Oct. 14, 1980, 94 Stat. 1956, set forth provisions respecting collective bargaining agreements.

Section 775, Pub. L. 93-236, title V, § 505, Jan. 2, 1974, 87 Stat. 1015; Pub. L. 94-210, title VI, § 616(a)-(g), Feb. 5, 1976, 90 Stat. 115, 116; Pub. L. 94-555, title II, § 209, 210, Oct. 19, 1976, 90 Stat. 2623; Pub. L. 96-448, title V, § 501-503, Oct. 14, 1980, 94 Stat. 1948-1954, set forth provisions relating to employee protection programs.

Section 776, Pub. L. 93-236, title V, § 506, Jan. 2, 1974, 87 Stat. 1019, related to contracting out of work.

Section 777, Pub. L. 93-236, title V, § 507, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 96-448, title V, § 508(c), Oct. 14, 1980, 94 Stat. 1957, related to arbitration of disputes or controversies.

Section 778, Pub. L. 93-236, title V, § 508, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94-210, title VI, § 617, Feb. 5, 1976, 90 Stat. 117, related to duties of acquiring and selling railroads.

Section 779, Pub. L. 93-236, title V, § 509, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94-210, title VI, § 616(h), Feb. 5,

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**EXHIBIT D**

## NOTICES

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-451N)]

Rail Carriers; Conrail Abandonment Between **Catasauqua** and Leighton, PA; Findings

Monday, October 4, 1982

\*43811 Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate and decision authorizing the **Consolidated Rail Corporation** to abandon its rail line between **Catasauqua**, milepost 98.0 and Leighton, milepost 119.3 in the Counties of Lehigh and Carbon, PA, a total distance of 21.3 miles effective on March 11, 1982.

The net liquidation value of this line is \$1,647,927. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27186 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

47 FR 43811-03, 1982 WL 121230 (F.R.)  
END OF DOCUMENT

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, June 10, 2015, a copy of the foregoing Reply of R.J. Corman Railroad Company/Allentown Lines, Inc. to James Riffin's "Initial Comments" was served via first class mail, postage prepaid, and by more expeditious means of delivery upon the following party (who is the only party of record aside from counsel for R.J. Corman Railroad Company/Allentown Lines, Inc.):

James Riffin  
P. O. Box 4044  
Timonium, MD 21094  
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June 10, 2015



Robert A. Wimbish  
Attorney for R.J. Corman Railroad  
Company/Allentown Lines, Inc.